

F O R M S
F o r
P R E - H E A R I N G O R D E R S

The attached forms should be used for all hearings before the Housing Appeals Committee. It is the responsibility of counsel to discuss the contents of the Pre-Hearing Order well in advance of the Pre-Hearing Conference and prepare a single draft. Any areas of disagreement will be discussed with the Presiding Officer at the conference. The Pre-Hearing Order will be signed at the conference or shortly after.

Sections II, III, V, and VI of the Pre-Hearing Order will require drafting by counsel.

Sections I and IV should not require redrafting. Section IV should be completed by counsel, specifying the issues raised in the particular case. Sections that are not applicable may be deleted, but **language in the form should not be changed until it is discussed with the Presiding Officer** at the Pre-Hearing Conference.

Exhibits should be exchanged in advance, and counsel should attempt to agree on the admission of as many as possible. Exhibits that cannot be agreed upon should be listed on the Pre-Hearing Order as Proposed Exhibits. Their admissibility will either be ruled upon by the presiding officer at the Pre-Hearing Conference or, if the hearing is oral (without prefiled testimony), during the course of the hearing. Exhibits should be listed with consecutive numbers, without regard to whether they are the Appellant's or the Board's exhibits. The exhibits themselves will normally be physically numbered during the Pre-Hearing Conference.

Witness lists should also be exchanged in advance. Each list should be given careful consideration to avoid duplication. Witnesses should be listed with their titles or functions. If the subject matter of any witnesses' testimony is not clear from their titles or functions, short explanations should be provided.

Two documents are attached below. The first is a form to be used in cases in which the Board issued a denial. The second is for cases in which a permit was granted with conditions. These documents are in Word 2000.

The draft Pre-Hearing Order and all agreed-upon and proposed Exhibits should be filed with the Committee one week prior to the Pre-Hearing Conference.

COMMONWEALTH OF MASSACHUSETTS
HOUSING APPEALS COMMITTEE

_____)	
[Developer],)	
)	
Appellant)	
)	
v.)	No. ____ - ____
)	
[Town] BOARD OF APPEALS,)	
Appellee)	
_____)	

DRAFT (DENIAL)
[DATE OF DRAFT]

PRE-HEARING ORDER

I. INTRODUCTION

1. Pursuant to 760 CMR 30.09(4), this pre-hearing order formalizes matters agreed to by the parties at and following the Preliminary Conference of Counsel [DATE], 20[XX] and Pre-Hearing Conference [DATE], 20[XX] in the above case. Its purpose is to facilitate the presentation of evidence at the de novo hearing before the Housing Appeals Committee.

2. For good cause, either party may at any time request modification of this order. Any such request for modification of Stipulations, Issues in Dispute, or Proposed Witnesses shall be by written motion, as provided in 760 CMR 30.07. A request for modification of Exhibits may be made orally during an evidentiary session of the hearing, provided that five days prior notice has been given to opposing counsel.

II. STIPULATIONS

1. By decision filed with the town clerk on [DATE], 20[XX] with regard to the parcel of land located at [ADDRESS], [Town] Board of Appeals denied the Appellant's application for comprehensive permit pursuant to G.L. c. 40B, §§ 20-23 (see Exhibit 1).
2. The Town of [Town] has not satisfied any of the statutory minima defined in sentence two of the definition of "consistent with local needs" in G.L. c. 40B, § 20.
3. The Appellant, [Developer], is a [SELECT CORRECT ONE]: public agency or non-profit organization or limited dividend organization], as required by 760 CMR 31.01(1)(a).
4. The project which is the subject of the application and this appeal is fundable under the [NAME] program, as required by 760 CMR 31.01(1)(b).
5. The Appellant controls the site of the project, as required by 760 CMR 31.01(1)(c).

III. MOTIONS [OPTIONAL]

1. As further specified in the pleadings on file with the Committee, the parties have moved as follows:
 - a. The Board has moved to
 - b. The Board has moved to

IV. ISSUES IN DISPUTE AND BURDENS OF PROOF

1. Pursuant to 760 CMR 31.05(2), the ultimate issue in this case is whether the decision of the Board was consistent with local needs.

2. Pursuant to 760 CMR 31.06, the issues below are the sole issues in dispute, and the parties shall have the burden of proving their cases as follows:

Appellant/Applicant's Case

3. [IF NOT STIPULATED ABOVE] to prove jurisdiction pursuant to 760 CMR 31.01(1)(a), 31.01(1)(b), and 31.01(1)(c), that is, that the Appellant is a limited dividend organization, that the project is fundable, and that the Appellant controls the site.

4. to establish a prima facie case by proving that its proposal complies with federal or state statutes or regulations or with generally recognized standards with regard to these specific issues:

(a)

(b)

(c)

5. [ONLY IF THE APPELLANT CHOOSES TO PURSUE THIS ISSUE] alternatively, to prove that local requirements or regulations have not been applied as equally as possible to subsidized and unsubsidized housing with regard to these specific issues:

(a)

(b)

(c)

Board's Case

6. to prove that there are valid health, safety, environmental, design, open space, or other local concerns which support the denial of the comprehensive permit, that is, concerns with regard to each of the issues in ¶ III-4, above.

7. to prove that such local concerns outweigh the regional housing need.

8. [ONLY IF INADEQUACY OF EXISTING MUNICIPAL SERVICES OR INFRASTRUCTURE IS IN ISSUE] to prove, pursuant to 760 CMR 31.06(8), that existing municipal services or infrastructure, namely, _____ (¶ __, above), are inadequate to meet local needs and that provision of such services is not technically [??] or financially feasible.

Appellant/Applicant's rebuttal

9. to prove that preventive or corrective measures have been proposed which will mitigate the local concerns.

V. EXHIBITS

Exhibits Admitted into Evidence

1. Decision of [Town] Board of Appeals - _/_/_
2. Site Development Plan¹ [required]
3. Architectural Plans [if necessary]
4. List of Exceptions to Local Requirements [only those not included in plans, V-2 and V-3, above] [required]
5. Memo to [Name] fr. [Name] - _/_/_

etc.

Proposed Exhibits (Admissibility to be Ruled Upon at the Pre-Hearing Conference or during the Hearing)

For the Appellant

¹ [Items V-2 through V-6 should describe the current proposal which is being presented to the Committee for approval. Previous iterations of these items should not be included unless they are essential to the proof of the developer's case. Typically, the current proposal will not have been changed in any material way from the proposal that the Board approved with conditions or denied. Any change is subject to 760 CMR 31.03.]

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For the Board

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VI. PROPOSED WITNESSES

For the Appellant

_____, Proponent [??]

_____, Architect [??]

_____, Site Engineer [??]

_____, [TITLE] [??]

etc.

For the Board

_____, [TOWN ENGINEER] [??]

_____, [TOWN STAFF MEMBER] [??]

_____, [Consulting Engineer] [??]

_____, [TITLE] [??]

etc.

VII. SCHEDULE FOR PREFILED TESTIMONY AND HEARING

1. The Appellant's direct case shall be filed on or before [DATE], 20[XX] [normally 6 weeks after Pre-Hearing Conference].

2. The Board's direct case shall be filed on or before [DATE], 20[XX] [normally 12 weeks after Pre-Hearing Conference].

3. The Appellant's rebuttal shall be filed on or before [DATE], 20[XX] [normally 16 weeks after Pre-Hearing Conference].

4. The oral portion of the hearing shall convene at 10:00 a.m. on [DATE], 20[XX] at [ADDRESS], in the town of [NAME]. This session shall be followed by a site visit. Additional sessions will be scheduled at the Committee's offices in Boston on consecutive days thereafter.

FOR THE APPELLANT, [Developer]

[Aname], Esq.
[Aaddress]
[Aphone]

FOR THE [Town] BOARD OF APPEALS,

[Bname], Esq.
[Baddress]
[Bphone]

BY THE HOUSING APPEALS COMMITTEE,

(date)

[name]
Presiding Officer

COMMONWEALTH OF MASSACHUSETTS
HOUSING APPEALS COMMITTEE

_____)	
[Developer],)	
)	
Appellant)	
)	
v.)	No. ____ - ____
)	
[Town] BOARD OF APPEALS,)	
Appellee)	
_____)	

DRAFT (APPROVAL WITH CONDITIONS)
[Date of Draft]

PRE-HEARING ORDER

I. INTRODUCTION

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2. For good cause, either party may at any time request modification of this order. Any such request for modification of Stipulations, Issues in Dispute, or Proposed Witnesses shall be by written motion, as provided in 760 CMR 30.07. A request for modification of Exhibits may be made orally during an evidentiary session of the hearing, provided that five days prior notice has been given to opposing counsel.

II. STIPULATIONS

1. By decision filed with the town clerk on [DATE], 20[XX], with regard to the parcel of land located at [ADDRESS], [Town] Board of Appeals denied the Appellant's application for comprehensive permit pursuant to G.L. c. 40B, §§ 20-23 (see Exhibit 1).

2. The town of [Town] has not satisfied any of the statutory minima defined in sentence two of the definition of "consistent with local needs" in G.L. c. 40B, § 20.

3. The Appellant, [Developer], is a [SELECT CORRECT ONE]: public agency or non-profit organization or limited dividend organization], as required by 760 CMR 31.01(1)(a).

4. The project which is the subject of the application and this appeal is fundable under the [NAME] program, as required by 760 CMR 31.01(1)(b).

5. The Appellant controls the site of the project, as required by 760 CMR 31.01(1)(c).

III. MOTIONS [OPTIONAL]

1. As further specified in the pleadings on file with the Committee, the parties have moved as follows:

a. The Board has moved to

b. The Board has moved to

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1. Pursuant to 760 CMR 31.05(2), the ultimate issue in this case is whether the decision of the Board was consistent with local needs.

2. Pursuant to 760 CMR 31.06, the issues below are the sole issues in dispute, and the parties shall have the burden of proving their cases as follows:

Appellant/Applicant's Case

3. [IF NOT STIPULATED ABOVE] to prove jurisdiction pursuant to 760 CMR 31.01(1)(a), 31.01(1)(b), and 31.01(1)(c), that is, that the Appellant is a limited dividend organization, that the project is fundable, and that the Appellant controls the site.

4. to prove that the following conditions, in aggregate, make the building or operation of the housing uneconomic:²

(a) Condition ____ - _____

(b) Condition ____ - _____

(c) Condition ____ - _____

5. [ONLY IF THE APPELLANT CHOOSES TO PURSUE THIS ISSUE] alternatively, to prove that local requirements or regulations have not been applied as equally as possible to subsidized and unsubsidized housing with regard to these specific issues:

(a)

(b)

(c)

Board's Case

6. to prove that there are valid health, safety, environmental, design, open space, or other local concerns which support each of the conditions in ¶ III-4, above.

7. to prove that such local concerns outweigh the regional housing need.

2. That is, pursuant to 760 CMR 31.06(3)(b), the conditions imposed by the Board make it impossible to proceed in building or operation of the proposed housing and still realize a reasonable return. [IN A VERY SMALL NUMBER

8. [ONLY IF INADEQUACY OF EXISTING MUNICIPAL SERVICES OR INFRASTRUCTURE IS IN ISSUE] to prove, pursuant to 760 CMR 31.06(8), that existing municipal services or infrastructure, namely, _____ (¶ __, above), are inadequate to meet local needs and that provision of such services is not technically [??] or financially feasible.

Appellant/Applicant's Rebuttal

9. to prove that preventive or corrective measures have been proposed which will mitigate the local concerns.

V. EXHIBITS

Exhibits Admitted into Evidence

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3. Architectural Plans [if necessary]
4. List of Exceptions to Local Requirements [only those not included in plans, V-2 and V-3, above] [required]
5. Regulatory Agreement [required]
6. Deed Rider [if homeownership]
7. Ltr. to [Name] fr. [Name] - _/_/_
8. Memo to [Name] fr. [Name] - _/_/_

OF CASES, LANGUAGE REFLECTING THE PROVISIONS OF §§ 31.06(3)(a) or 31.06(3)(b) SHOULD BE ADDED.]

³ [Items V-2 through V-6 should describe the current proposal which is being presented to the Committee for approval. Previous iterations of these items should not be included unless they are essential to the proof of the

etc.

Proposed Exhibits (Admissibility to be Ruled Upon at the Pre-Hearing Conference or during the Hearing)

For the Appellant

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For the Board

—.

—.

VI. PROPOSED WITNESSES

For the Appellant

_____, Proponent [??]

_____, Architect [??]

_____, Site Engineer [??]

_____, [TITLE] [??]

etc.

For the Board

_____, [TOWN ENGINEER] [??]

_____, [TOWN STAFF MEMBER] [??]

_____, Consulting Engineer [??]

_____, [TITLE] [??]

developer's case. Typically, the current proposal will not have been changed in any material way from the proposal that the Board approved with conditions or denied. Any change is subject to 760 CMR 31.03.]

etc.

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FOR THE APPELLANT, [Developer]

[Aname], Esq.

[Aaddress]

[Aphone]

FOR THE [Town] BOARD OF APPEALS,

[Bname], Esq.

[Baddress]

[Bphone]

BY THE HOUSING APPEALS COMMITTEE,

(date)

[name]
Presiding Officer

LP2p.r
05-15-05